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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/004,803	01/09/1998	JASON T. EPPS		1682
7590 10/22/2002 John R. Merkling			EXAMI	NFR
310 South Yaupon Richwood, TX 77531-2229			STRIMBU, GREGORY J	
			ART UNIT	PAPER NUMBER
			3634	•

DATE MAILED: 10/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. If the MAILING DATE OF THIS COMMUNICATION. If the period for energy is pacified above as less than thirty (30) days, a nergy within the statutory miserum with (30) days, will be considered timely. If the period for reply is specified above, be maximum of alliancy period all pagely and vill angles (50) (MONTS from the mailing date of his communication. If the period for reply is specified above, be maximum datationy period vall apply and vill angles (50) (MONTS from the mailing date of his communication. If the period for reply is specified above, be maximum datationy period vall and pagely and vill angles (50) (MONTS from the mailing date of his communication. If the period for reply is specified above, be maximum datationy period vall and pagely and vill angles (50) (MONTS from the mailing date). Responsive to communication (5) filed on 12 August 2002. This action is FINAL. 2b) This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4) Claim(s) 1-5.7.9 and 12-16 is/are pending in the application. 4a) Of the above claim(s) is/are epicted. 7b	<u> </u>							
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- The MAILING DATE of this communication appears on the cover sheet with th correspondence address - Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. Extensions of time may be available under the provisions of 3 C.R. 1.130(a). In no event, however, may a reply be timely filed that the state of the provisions of the state of the provisions of 3 C.R. 1.130(a). In no event, however, may a reply be timely filed that the state of the provision of the	Office Action Summary	Examiner	Art Unit					
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THE MAILING DATE OF THIS COMMUNICATION. Elaterations of time may be available under the provision of 3 or CR 1.13(a). In no event, however, may a reply be limely filed after SIX (8) MONTHS from the mailing date of this communication. If the periods or reply such that the set of extended period for reply will, by a faulture provision or the set of extended period for reply will, by a faulture provision or the set of extended period for reply will, by a faulture provision or the set of extended period for reply will, by a faulture provision or the set of extended period for reply will, by a faulture provision or the set of extended period for reply will, by a faulture provision or the set of extended period for reply will, by a faulture provision or the set of extended period for reply will, by a faulture provision or the set of extended period for reply will, by a faulture provision or faulture provision or faulture provision or faulture provision of Claims 4) Claim(s) 1-5.7.9 and 12-16 is/are pending in the application. 4a) Of the above claim(s) is/are a faulture provision or claims 5) Claim(s) is/are a faulture provision or extended period for reply is/are rejected. 7) Claim(s) is/are a faulture provision and/or election requirement. Application Papers 9) The specification is objected to by the Examiner. 10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. If approved, corrected drawings are required in reply to this Office action. 11) The proposed drawing correction filed on is/are allowed. 12)								
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——————————————————————————————————————	P) Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) Notice of Informal						

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In light of the applicant's comments in the appeal brief of August 12, 2002, it has been determined that neither a 35 USC 102 nor 103 rejection can be made base upon the prior art of record. However, the issue of new matter, couched in the objection to the specification in the previous office action, still remains. It should be noted that objections to the specification cannot be appealed. Therefore, the finality of the previous Office action has been withdrawn and prosecution of the application has been reopened so that a rejection based on the new matter issue can be properly made and subsequently appealed.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-5, 7, 9 and 12-16 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Although the applicant originally disclosed the concepts of focusing the sensors upwardly and focusing the sensors at an angle of approximately 10 degrees from the vertical, the applicant has <u>not</u> disclosed the <u>specific range</u> of no more than about 10 degrees from the vertical. Even though the terminology "upwardly" includes the range of no more than about 10 degrees from the vertical, the applicant must clearly set forth the specific

range of no more than about 10 degrees from the vertical in order to show that the applicant had possession of the claimed invention at the time of filing.

Claim Rejections - 35 USC § 112

Claims 1-5, 7, 9 and 12-16 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "an extended arm" on line 10 of claim 1 render the claims indefinite because it is unclear if the applicant is referring to the object set forth above or is attempting to set forth another object in addition to the one set forth above.

Conclusion

THIS ACTION IS NOT MADE FINAL.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 703-305-3979. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 703-308-2686. The fax phone numbers for the organization where this application or proceeding is assigned are 703-

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305-3597 for regular communications and 703-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-

2168.

Gregory J. Strimbu Primary Examiner Art Unit 3634

October 21, 2002